

# SNIFFEN & SPELLMAN, P.A.

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## **Education Law Alert**

**June 2018**

### **School District Liable for Student Bullying Under Pennsylvania Anti-Discrimination Law**

A state trial court ordered the Philadelphia School District to pay \$500,000 to the family of Amanda Wible, who was subjected to severe bullying. The family sued the school district under the Pennsylvania Human Relations Act (PHRA). Similar to Title VII, claims brought under the PHRA typically allege unlawful employment practices. According to Wible's attorney, this case marked the first time the PHRA was applied to a student-on-student bullying claim against a school.

From elementary school to high school, classmates subjected Wible to severe verbal and physical harassment based on her gender presentation, which was non-conforming to societal expectations for girls' dress and appearance. Efforts by school officials were "non-existent" even after repeated attempts by Wible's mother to notify the school of the bullying. The harassment caused Wible to suffer depression and anxiety causing her to engage in self-harm and have suicidal thoughts. She also developed "Complex Type Post-Traumatic Stress Disorder."

Other states could follow Pennsylvania and apply state anti-discrimination laws to bullying claims filed against schools. School districts should ensure their policies address bullying, including having a procedure for reporting and responding to complaints of harassment.

Read more [here](#).

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### **Termination for Twitter**

Twitter is a social media platform used each month by approximately 336 million users throughout the world. It permits users to post short statements that are instantly viewable by users who have selected to "follow" the poster, and has been a constant presence in the media throughout the Trump presidency. Currently limited to 280 characters per tweet, users frequently use Twitter to broadcast their reactions to certain events, immediate thoughts, or other information that they believe others may find interesting. As with all things on the internet, it is unlikely that these tweets can ever truly be deleted, and innumerable people have made tweets which they later regretted.

In light of how permanent tweets are, it should not be surprising that a number of employers have been presented with a situation in which they are tempted to terminate an individual for comments that they have made on Twitter. In the context of publicly owned universities, there have been several instances in which a tenured professor has made comments on Twitter which have resulted in calls for their termination.

Take for example, Professor Randa Jarrar who, within an hour of the death of Barbara Bush, went on what has been described as a "Twitter rant" where she made numerous allegations regarding the Bush family, implied that she could say whatever she wanted as she was a tenured professor, and inexplicably directed people to call a suicide hotline by representing that it was her personal phone number.

This resulted in numerous individuals to petition Fresno State University, Jarrar's employer, for her termination. The President of the University, in response to these requests, released a statement that while he and the University did not endorse Jarrar's comments, they could not terminate her employment as her statements on Twitter were protected speech under the First Amendment to the United States Constitution. This determination was correctly made, as Fresno State is a public university and therefore a government entity.

This determination comes from three separate decisions made by the Supreme Court and have been summarized into three questions by David L. Hudson, a First Amendment Scholar. The first of these cases is *Garcetti v. Ceballos*, which states that a public employee's speech is protected when they are acting as a private citizen as opposed to in their official capacity. Jarrar was undeniably acting as a private citizen at the time of her "Twitter rant," and specifically disclaimed that she was not acting on behalf of the University. Next, the Court in *Pickering v. Board of Education* and *Connick v. Meyers*, stated that the public employee must be speaking on a matter of public concern. In this matter, it is arguable that Jarrar was commenting on the death and legacy of a public figure, which could be a matter of public importance. Finally, both *Pickering* and *Connick* teach that a public employer may still restrict an employee's speech when it unduly interferes with the fulfillment of the public employer's duties. It is unlikely that Fresno State would be able to meet this burden in regards to Jarrar, who was on a six month sabbatical at the time of her tweets.

Public employers should closely analyze any actions that they take in regard to their employee's actions and speech, especially if an employee's actions are being made as a private citizen. Unfortunately, and similar to posting a tweet, it is all too easy to make a quick decision now which can lead to snowballing problems in the future.

For additional information on Jarrar's comments, please click [here](#).

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### **Department of Labor and Department of Education Better Together?**

On June 21, President Trump unveiled a plan to merge the Department of Labor and Department of Education into an entity that would be known as the Department of Education and Workforce. The administration asserts the merger would promote government efficiency but specifics and the impact on employees are unknown.

The plan also unveils four main sub-agencies: (1) K-12, (2) American Workforce and Higher Education Administration, (3) Enforcement; and (4) Research, Evaluation, and Administration. According to the plan the enforcement sub-agency would include agencies from the Department of Labor responsible for enforcing statutes relating to workers' pay, safety, benefits, and other protections as well as the Department of Education's Office of Civil Rights.

The proposed merger faces an uphill battle as it would need to be approved by Congress where it likely would face opposition from Democrats and a minority of Republicans.

Read more [here](#).

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### **Eastern Michigan University the Subject of the "Other" Kind of Title IX Lawsuit**

Eastern Michigan University has been sued by two female athletes under Title IX for allegedly limiting sports opportunities for women. Earlier this year the University announced that it would no longer offer wrestling, men's swimming and diving, softball, and women's tennis. The decision was immensely unpopular however the University has maintained that the cuts, affecting an estimated 83 male and female athletes were necessary to remain financially stable. The plaintiffs argue the cuts were illegal and the University has a long history of discrimination against women.

In order to not run afoul of Title IX, an institution must match the proportion of male and female athletes to the ratio of overall enrollment. The University fields 10 women's teams and seven men's teams; however, it is the number of participants that matters, not the number of teams.

Read more [here](#).

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### **Justice Kennedy Announces his Retirement**

Justice Anthony Kennedy, originally appointed to the Supreme Court during the Reagan administration, announced his retirement on June 27, 2018. His last day will be July 31, 2018.

After serving on the Supreme Court for more than 30 years, Justice Kennedy has often been viewed as a moderate Justice. He notably penned the opinions legalizing same-sex marriage in 2015, and permitting Super PACs to independently expend funds on political advertisements in 2010. Additionally, he has been noted to be the swing vote in issues such as gun control, capital punishment, reproductive rights, and the rights of detainees at Guantanamo Bay. His retirement will permit President Trump to recommend his second appointment to the Supreme Court.

Read more [here](#).

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### **From the Lighter Side: Back so Soon?**

A Melbourne, Florida resident Charles Folk had just been released from the Brevard County Jail Complex, where he had been held after a conviction of criminal mischief for ransacking his own home and destroying his roommate's belongings. Mr. Folk needed a ride to his home approximately 30 miles away so he hailed a taxi. He informed the driver he would pay the fare with a credit card once they arrived at his residence.

Upon arrival Mr. Folk told the driver that he did not have any money and that neither his sister nor roommate could pay.

The driver alerted police and Mr. Folk was arrested and charged with petty theft then transported right back to the Brevard County Jail Complex.

Read more [here](#).